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THE STATE OF NEW HAMPSHIRE



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May 18, 1978

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Francis E. Whaland, Commissioner Insurance Department 169 Manchester Street Concord, New Hampshire 03301

Dear Commissioner Whaland:

This is in reply to your letter of December 14, 1977 requesting an opinion from this office with respect to the Insurance Department's jurisdiction over state-chartered banks under N.H. RSA Chapter 421. For the reasons set forth below we have concluded that a New Hampshire bank is required to obtain a dealer's license under RSA 421:3 in order to solicit and sell its own securities to the general public.

The following sections of Chapter 421 cited in pertinent part below are germane to this issue:

> 421:1 Dealer. Under this chapter dealer shall mean any individual, partnership, association or corporation engaging in the purchasing, selling or offering for sale of securities, except through the medium of or as agent or salesman of a registered dealer.

421:2 Securities. Securities shall include all classes of stocks and shares, bonds, debentures, evidences of indebtedness and certificates of participation, certificates of warehousement, rights and interests in lands from which petroleum or minerals are. or intended to be, produced, ship shares and investment contracts in the form of a bill of sale, or any similar device, and contract or service or advise relating to investments, or membership in organizations or associations purporting to render such service or advice. (emphasis supplied)

Francis E. Whaland, Commissioner Page Two May 15, 1978

421:3 Licensee. Any corporation chartered by or organized under the laws of this state and actually engaged in business herein, or any public utility corporation actually engaged in business in this state, shall be entitled to receive from the insurance commissioner a license authorizing it, by its officers, agents, and employees, to sell its stocks, bonds, or other securities within this state, upon making application therefore and paying a license fee of twenty-five dollars and furnishing evidence satisfactory to the commissioner that the issue of such license will not be inconsistant with the public interest. (emphasis supplied).

421:6 Status as Dealers in Securities. Such corporation and its officers, agents, and employees so licensed shall be regarded as dealers in securities under the provisions of this chapter.

421:7 Registration Required. No dealer in securities shall, in this state, by direct solicitation or through agents or salesmen, or by letter, circular, or advertising sell, offer for sale, or invite offers for or inquiries about securities, unless registered as a dealer under the provisions of this chapter.

We have emphasized that language in the above excerpts which make these statutes applicable to every New Hampshire corporation, including those that might be subject to the jurisdiction of other state agencies or commissions. It is relevant in this respect that the final sentence of RSA 421:2 contemplates and provides for such overlap, at least with respect to non-profit and related organizations.

Francis E. Whaland, Commissioner Page Three May 15, 1978

As you are aware, state-chartered banks in New Hampshire are primarily subject to the jurisdiction of the Banking Department c.f. RSA 383:9, 384:14, 384:14-a, 386-A:22, 387:13. While RSA 383:9 gives the Bank Commissioner "general supervision" of all banks, there appears to be no provision of law in Title XXXV (Banks and Banking) which renders the Banking Department's jurisdiction exclusive in such cases. indication that other agencies, both state and federal, were contemplated by the General Court to review the activities of banks in appropriate cases may be found in RSA 383:9-a (Federal Deposit Insurance Corporation) and 383:14 (Insurance Commissioner, Attorney General).

While an overlap in the area of licensing banks to sell their own securities might be characterized as an unnecessary duplication in the use of the state government resources, the statutes cited above are so clear as to permit no other interpretation. It might also be noted that the public interest protected by these respective departments differs somewhat in that the Banking Department is primarily concerned with depositors and the Insurance Department with investors. Any determination that both the Insurance & Banking Departments need not be involved in this area of regulation would necessarily be legislative.

Yours Sincerely

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